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March 28, 2023

Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: *United States v. Sanders*, No. 22-4242
Citation of Supplemental Authority

Dear Ms. Connor:

Appellant respectfully submits supplemental authority pertinent to the Fourth Amendment issues in this appeal.

Franks. To obtain a warrant to search Appellant's home, the FBI falsely represented that it had received a tip that "Appellant had accessed illegal *content*" on a website. Def. Br. 9. In truth, the tip documents reported "access *to the website*" only, not *content* stored *on* that website. Def. Br. 17-25. The government dismissed that claim as a "wishful misreading" of the tip documents. Gov't Br. 21. By denying Appellant's requests for a hearing or relevant discovery, the district court essentially permitted the government to sweep that misrepresentation under the rug.

United States v. Dugan began with a strikingly similar tip from foreign law enforcement. The tip there, like here, reported that a particular U.S. IP address had accessed a certain website in May 2019. Transcript, No. 21-cr-00127 (S.D. W. Va. Aug. 2, 2022). But when the agent in *Dugan* was put under oath, he admitted that the tip said only that a computer "was used *one time* to access the *home page* on *one occasion*." *Id.* at 68:9-69:14 (emphasis added). That testimony confirms what Appellant has said all along. The district court erred by accepting the government's contrary—and atextual—reading, without a hearing or even discovery.

Joint Venture. Appellant also sought discovery to support his claim that the United States was in a joint venture with the foreign agency that provided the tip. Def. Br. 29-30. The government dismissed that claim as "pure speculation." Gov't Br. 27. Yet, once again, the *Dugan* agent's sworn testimony shows otherwise. He testified that U.S. law enforcement "was *working jointly with and assisting a foreign law enforcement agency* conducting an ongoing investigation." Transcript 61:1-9 (emphasis added). And he confirmed that foreign law enforcement gave the government the tip as part of that "ongoing

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investigation.” *Id.* at 61:10-62:1. The tip is, therefore, the direct result of a joint venture, which the government hid for years by fighting tooth-and-nail against any discovery request.

These revelations further underscore that Appellant’s convictions are riddled with Fourth Amendment problems. The Court should reverse.

Respectfully submitted,

/s/ Lawrence S. Robbins

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